

**CITY OF FREMONT
REAL PROPERTY PURCHASE AND SALE AGREEMENT
4178, 4194 AND 4268 DECOTO ROAD
FREMONT, CA 94555**

This Real Property Purchase and Sale Agreement, ("Agreement") is made and entered into on _____ 2016 by and between the City of Fremont ("CITY") and _____ ("Buyer").

RECITALS

- A. The CITY is the owner of all that certain real property located at 4178, 4194 and 4268 Decoto Road in the City of Fremont, County of Alameda, State of California, further described as APNs 543-0256-022-04, 543-0256-021-00 and 543-0256-023-03 in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property"). Buyer and CITY acknowledge that the Property encompasses approximately ± 9.59 acre lot (or $\pm 417,740$ square-feet). As used herein, the term "Property" shall include all of City's right, title and interest in and to all entitlements, easements, mineral and similar rights, water, water rights, air rights, development rights and all privileges appurtenant to the Property; and..
- B. On April 24, 2014, the City's Planning Commission found the proposed disposition of the Property in conformance with the City's General Plan. City complied with its obligations under the Surplus Lands Act (Government Code Section 54220 through 54227) by providing a written Notice of Intent to Sell dated September 3, 2015, to various public entities, within whose jurisdiction the Property is located, and affordable housing sponsors. No letters of interest were received.
- C. After advertising the Property for sale, on February 18, 2016, CITY conducted a public auction for the sale of the Property, but no bids were submitted.
- D. On March 22, 2016, CITY readvertised the Property for sale and requested offers in the form of sealed written bids. On _____, CITY conducted a bid opening session, where all bids were publicly opened and read aloud. Buyer submitted the highest bid to CITY for the purchase of the Property. The Buyer's Written Bid Form is set forth as Exhibit "B" attached to and made a part of this Agreement.

NOW, THEREFORE, the parties agree as follows:

- 1. **PURCHASE AND SALE:** The Buyer hereby agrees to purchase and CITY agrees to sell the Property on the terms and conditions set forth in this Agreement. Buyer and CITY agree that a portion of the Property is currently improved for use as a commercial landscape nursery, as described in Exhibit "C," attached to and made a part of this Agreement.

2. **PURCHASE PRICE:** The Purchase Price for the Property shall be _____ DOLLARS (\$_____).

3. **DUE DILIGENCE PERIOD:** The Buyer shall have from the day escrow opens until 5:00 p.m. Pacific Time on August 15, 2016 as a "Due Diligence Period" to investigate and conduct studies on the Property. During this period, Buyer shall have an opportunity to investigate and inspect all aspects of the Property, subject to the provisions of Paragraph 13 hereof, and determine, in the Buyer's sole and absolute discretion, whether or not to acquire the Property pursuant to the terms and conditions set forth herein. Any studies undertaken by Buyer during the Due Diligence Period will be at Buyer's expense. Buyer shall have the right to review any title reports, surveys, toxic and soil studies and all other correspondence and documents relating to the Property that are in CITY's possession. CITY agrees that if additional documentation relating to the Property comes into CITY's possession after expiration of the Due Diligence Period, CITY shall provide copies of such documents promptly to Buyer. Buyer acknowledges that CITY makes no representation or warranty whatsoever as to the accuracy or completeness of any information provided to Buyer or made available to Buyer under this paragraph.

4. **PURCHASE DEPOSITS:**

- a. On _____ 2016, Buyer deposited with the CITY the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000) as the "Initial Purchase Deposit". The Initial Purchase Deposit shall be credited toward the purchase price at close of escrow. If Buyer fails to increase the Initial Purchase Deposit as required in section 4.b, below, then this Agreement shall terminate and City shall instruct the Escrow Holder to return the Initial Purchase Deposit less the sum of TWENTY THOUSAND DOLLARS (\$20,000) to cover the costs associated with processing and pursuing completion of this transaction ("City Costs").
- b. Within seven (7) business days of the City Council's approval of this Agreement, Buyer shall deposit into escrow an additional _____ DOLLARS (\$_____) (the "Second Purchase Deposit") to increase the Initial Purchase Deposit to an amount equal to two (2%) of the Purchase Price."

If Buyer gives written notice to CITY on or before the expiration of the Due Diligence Period, which shall occur at 5 p.m. on August 15, 2016, that Buyer does not wish to complete the purchase, then CITY shall instruct the Escrow Holder to return the Initial Purchase Deposit together with the Second Purchase Deposit, less the sum of TWENTY THOUSAND DOLLARS (\$20,000) to cover the City Costs, to Buyer and this Agreement shall terminate. If Buyer fails to deliver such written notice within the Due Diligence Period, the full amount of the Initial Purchase Deposit and the Second Purchase Deposit shall become non-refundable and shall be released to CITY automatically upon expiration of the Due Diligence Period. This sum shall be credited towards the Purchase Price at close of escrow.

- c. By February 28, 2017, Buyer shall deposit into escrow an additional _____ DOLLARS (\$_____) to increase the purchase deposits to an amount equal to five (5%) of the Purchase Price (the "Third Purchase Price Deposit") The full amount of the Third Purchase Price Deposit is non-refundable, and shall be released to CITY automatically on _____ 2017. The Third Purchase Price Deposit shall be credited towards the Purchase Price at close of escrow. The Initial Purchase Price Deposit, Second Purchase Price Deposit and Third Purchase Price Deposit shall be collectively referred to in this Agreement as the "Full Purchase Price Deposit".

Buyer's failure to make the Third Purchase Price Deposit shall be a default under this Agreement. If Buyer fails to make the Third Purchase Price Deposit as required in this paragraph 4.c then this Agreement will be deemed terminated, and CITY shall instruct Escrow Holder to end the escrow and release any funds remaining in escrow from Buyer's Initial Purchase Price Deposit and/or Second Purchase Price Deposit. to CITY as liquidated damages for Buyer's default pursuant to section 15 below, and neither party shall have any further rights or obligations under this Agreement, except as otherwise expressly set forth herein.

- d. All interest on any portion of the Full Purchase Price Deposit released to CITY shall accrue to the benefit of CITY.

5. PAYMENT OF PURCHASE PRICE:

- a. Buyer shall deposit prior to the close of escrow date, the amount of the purchase price less the Full Purchase Price Deposit previously deposited by Buyer plus any additional monies required to close escrow, by cash, wire transfer, or a cashier's check made payable to the Escrow Holder, as defined in Paragraph 6 below.
- b. In the event Buyer fails to deposit the total cash required on or before the close of escrow date as specified in Paragraph 6 of this Agreement, the Buyer's rights to purchase the Property under this Agreement shall be terminated and in the event of such default by Buyer, CITY shall retain the Full Purchase Price Deposit paid by Buyer and released to CITY as liquidated damages pursuant to section 15 below, and neither party shall have any further rights or obligations under this Agreement, except as otherwise expressly set forth herein.

6. ESCROW

- a. Within seven (7) business days of the City Council's approval of this Agreement, CITY shall open the escrow with North American Title Company (Escrow No.: 54606-1401702-15). All references in this Agreement to "Escrow Holder" are to this title company. This Agreement shall constitute instructions to Escrow Holder. Buyer and CITY shall execute such additional escrow instructions as maybe required to enable Escrow Holder to close the escrow in accordance with the terms of this

Agreement and as Buyer and CITY may approve, which approval shall not be unreasonably withhold.

- b. Provided Buyer is not in default under any term or provision of this Agreement, Buyer shall have fifteen (15) months from the date of full execution of this Agreement to close escrow, and shall provide CITY and Escrow Holder with a written notice of the close of escrow at least ten (10) business days in advance of such close, but in no event shall escrow close later than _____. Such date shall be referred to herein as the "Closing Deadline." If the Closing Deadline falls on a Saturday, Sunday or legal holiday, the Closing Deadline shall be the next business day.
- c. Extension of Closing Deadline: Buyer may elect to extend the Closing Deadline on a month to month basis for up to a three (3) month period. As independent consideration for having granted Buyer the right to extend the Closing Deadline and to retain the exclusive right to purchase the Property under this Agreement, Buyer shall pay Seller ONE HUNDRED THOUSAND DOLLARS (\$100,000) for each one (1) month extension of the Closing Date. ("Extension Payment"). The Extension Payment(s) shall be non-refundable and shall not apply towards the Purchase Price or any escrow closing costs. Each time Buyer wishes to extend the Closing Deadline it shall provide written notice to CITY and Escrow Holder not less than ten (10) business days prior to the then existing Closing Deadline and shall deposit into escrow the Extension Payment. No extension of the Closing Date shall be effective until the Extension Payment is deposited into escrow by Buyer.
- d. "Close of Escrow" shall mean the moment when all the parties to escrow have fully performed their respective duties as provided in paragraphs (d) and (e) below, respectively, and the Escrow Holder has filed the documents for record and made distributions. Title shall be conveyed and possession delivered to Buyer upon Close of Escrow and recordation of the grant deed.
- e. On or before the Closing Deadline, CITY shall deposit with Escrow Holder all of the following:
 - (i) the fully executed and acknowledged grant deed;
 - (ii) CITY's escrow instructions sufficient to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement;
 - (iii) the affidavits described in paragraph (f) below; and
 - (iv) any other documents, records, or agreements required from CITY hereunder that have not previously been delivered.
- f. On or before the Closing Deadline (as it may be extended pursuant to paragraph 4.c), Buyer shall deposit with Escrow Holder all of the following:
 - (i) the Purchase Price, less the amount of the Full Purchase Price Deposit ;

- (ii) cash in an amount sufficient to pay all closing costs;
 - (iii) Buyer's escrow instructions sufficient to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement, and
 - (iv) any other documents, records, agreements, or funds required from Buyer hereunder that have not previously been delivered.
- g. For Buyer's sole benefit, Buyer's obligation to complete the purchase of the Property is subject to satisfaction of the following conditions at or prior to the Closing Deadline (as it may be extended pursuant to paragraph 4.c), unless waived by Buyer in writing:
- (i) CITY shall have timely performed its obligations under paragraph (d) above; and
 - (ii) CITY shall have executed and delivered to Escrow Holder an affidavit or affidavits satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, as well as California Revenue and Taxation Code Sections 18661, et seq.

If any condition described in this paragraph (f) is not timely satisfied (or waived by Buyer in writing) on or prior to the Closing Deadline (as it may be extended pursuant to paragraph 4.c), then:

- (i) the escrow shall terminate immediately upon receipt by Escrow Holder of notification from Buyer of the failure of such condition, and Buyer and CITY shall share equally any applicable escrow cancellation fees;
 - (ii) Escrow Holder shall return all instruments and documents deposited into the escrow to the parties depositing the same;
 - (iii) Escrow Holder shall return to Buyer any funds remaining in escrow deposited by Buyer, less only Buyer's share of applicable escrow cancellation fees, if any, and CITY shall promptly return the Full Purchase Price Deposit to Buyer, and
 - (iv) neither party shall have any further rights or obligations under this Agreement, except to the extent that the failure of a condition also constitutes a default by CITY with respect to any CITY's covenants or obligations under this Agreement.
- h. For CITY's sole benefit, CITY's obligation to complete the sale of the Property is subject to satisfaction of the following conditions at or prior to the Closing Deadline (as it may be extended pursuant to paragraph 4.c), unless waived by CITY in writing:
- (i) Buyer shall have timely performed its obligations under paragraph (e) above, including deposit of all required funds and documents.

If any condition described in this paragraph (g) is not timely satisfied (or waived by CITY in writing) on or prior to Closing Deadline (as it may be extended pursuant to paragraph 4.c) then:

- (i) the Escrow shall terminate immediately upon receipt by Escrow Holder of notification from CITY of the failure of such condition, and Buyer and CITY shall share equally any applicable escrow cancellation fees;
 - (ii) Escrow Holder shall return all instruments and documents deposited into the Escrow to the parties depositing the same;
 - (iii) Escrow Holder shall return to Buyer any funds remaining in escrow deposited by Buyer, less the amounts of the Full Purchase Price Deposits (which shall be distributed to City as liquidated damages pursuant to paragraph 15), any and all Extension Payments (which shall be distributed to City as consideration for any Closing Deadline Extensions pursuant to paragraph 4.c), and Buyer's share of applicable escrow cancellation fees, if any; and
 - (iv) neither party shall have any further rights or obligations to the other under this Agreement, except to the extent that a failure of a condition also constitutes a default by Buyer with respect to any of Buyer's covenants or obligations under this Agreement.
7. **CLOSING COSTS AND PRORATIONS:** Buyer shall pay all escrow costs and fees, all Title Company costs and fees, Title Insurance premiums, recording fees, transfer taxes and all closing costs and fees. Each party shall bear its own attorney's fees incurred in connection with this transaction. Real property taxes, premiums on insurance acceptable to Buyer, and any other expenses of the Property shall be prorated as of the Closing Deadline. The amount of any bond or assessment which is a lien shall be assumed by Buyer.
8. **NO REPRESENTATIONS OR WARRANTIES:**
- A. **PROPERTY SOLD "AS IS".** CITY AND BUYER AGREE THAT THE PROPERTY SHALL BE SOLD, AND THAT BUYER SHALL ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE, "AS IS, WHERE IS, WITH ALL FAULTS", WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO BE GIVEN IN THE GRANT DEED SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER BY CITY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND CITY DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. BY ENTERING INTO THIS AGREEMENT, BUYER REPRESENTS AND WARRANTS THAT AS OF CLOSING DEADLINE, BUYER SHALL HAVE SATISFIED ITSELF AS TO THE CONDITION OF THE PROPERTY AND ITS SUITABILITY FOR THE DEVELOPMENT PURPOSES INTENDED BY BUYER. THE PROPERTY IS SOLD IN "AS IS" CONDITION, INCLUDING WITHOUT LIMITATION AS TO ANY HAZARDOUS MATERIALS CONTAMINATION. IN PURCHASING THE PROPERTY, BUYER IS

RELYING SOLELY UPON ITS OWN INSPECTION AND INVESTIGATION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, AS TO HAZARDOUS MATERIALS CONTAMINATION AND GEOLOGICAL CONDITIONS INCLUDING EARTHQUAKE FAULTS AND NOT UPON ANY REPRESENTATION, WARRANTY, STATEMENT, STUDY, REPORT, DESCRIPTION, GUIDELINE, OR OTHER INFORMATION OR MATERIALS MADE OR FURNISHED BY CITY OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER. BUYER ACKNOWLEDGES THAT NEITHER CITY NOR ANY AGENT OF CITY HAS MADE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS AS TO ANY MATTERS CONCERNING THE PROPERTY. ANY STATEMENT NOT EXPRESSLY CONTAINED IN THIS AGREEMENT SHALL NOT BIND CITY, AND BUYER EXPRESSLY WAIVES ANY RIGHT OF RECISION AND/OR CLAIM FOR DAMAGES, AGAINST CITY OR ITS AGENTS BY REASON OF ANY STATEMENT, REPRESENTATION, WARRANTY, AND/OR PROMISE NOT CONTAINED IN THIS AGREEMENT. BUYER'S AGREEMENT TO PURCHASE THE PROPERTY "AS IS" IS A MATERIAL INDUCEMENT TO CITY TO AGREE TO SELL THE PROPERTY AT THE PURCHASE PRICE PROVIDED HEREIN.

- B. RELEASE AND WAIVER. BUYER, FOR BUYER AND BUYER'S SUCCESSORS IN INTEREST, RELEASES CITY FROM, AND WAIVES ALL CLAIMS AND LIABILITY AGAINST CITY FOR OR ATTRIBUTABLE TO, ANY STRUCTURAL, PHYSICAL, OR ENVIRONMENTAL CONDITION AT THE PROPERTY, INCLUDING WITHOUT LIMITATION, CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY, OR REMOVAL OF ANY HAZARDOUS SUBSTANCES IN, AT, ABOUT, OR UNDER THE PROPERTY, OR FOR, CONNECTED WITH, OR ARISING OUT OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON CERCLA (COMPREHENSIVE ENVIRONMENTAL RESPONSES, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. §§ 9601 ET SEQ., AS AMENDED BY SARA [SUPERFUND AMENDMENT AND REAUTHORIZATION ACT OF 1986], AND AS MAY BE FURTHER AMENDED FROM TIME TO TIME), THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, 42 U.S.C. §§ 6901 ET SEQ., OR ANY RELATED CLAIMS OR CAUSES OF ACTION OR ANY OTHER FEDERAL OR STATE BASED STATUTORY OR REGULATORY CAUSES OF ACTION FOR ENVIRONMENTAL CONTAMINATION AT, IN, OR UNDER THE PROPERTY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE AGREEMENTS OF BUYER SET FORTH IN THIS SUBPARAGRAPH 8B SHALL BE DEEMED REAFFIRMED AS OF THE CLOSE OF ESCROW AND SHALL SURVIVE THE CLOSE OF ESCROW AND SHALL NOT BE MERGED THEREIN. BUYER IS FAMILIAR WITH,

AND HEREBY WAIVES ITS RIGHTS, IF ANY, UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR SETTLEMENT WITH THE DEBTOR.”

BUYER INDICATES ITS ACKNOWLEDGMENT OF THE FOREGOING PROVISIONS OF SUBPARAGRAPHS BY INITIALING BELOW:

BUYER: _____

9. **TITLE:** Buyer acknowledges receipt and examination of Escrow Holder's Preliminary Title Report dated December 24, 2015 (North American Title Company Order #54606-1401702-15). Buyer shall take fee title to the Property by grant deed subject to any easements, rights of way, restrictions, reservations, conditions, deeds of trust, liens and encumbrances thereon and subject to all exceptions shown on said Preliminary Report and, in addition to exceptions shown, any matters affecting the condition of title approved by Buyer in writing or created by or through the acts or omissions of Buyer, its agents, employees, or contractors. Upon Close of Escrow, Buyer shall cause Escrow Holder to issue a CLTA extended coverage owner's policy of title insurance, or, at Buyer's election, an ALTA owner's policy of title insurance, in the amount of the Purchase Price, insuring that title to the Property is vested in Buyer. Buyer will pay and be solely responsible for, and shall hold the CITY harmless from, all costs and expenses in connection with the acquisition and issuance of such policy of title insurance, including without limitation, all survey and engineering expenses, if any. .
10. **POSSESSION:** Possession shall be delivered to Buyer upon Close of Escrow and recordation of the grant deed.
11. **NOTICES:** All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by a commercial overnight courier service, or sent by certified mail, postage prepaid, return receipt required, to the following addresses:

CITY: Sharon Jones, Facility and Real Property Manager
Public Works Department
City of Fremont
39550 Liberty Street
Fremont, CA 94538

With a copy to: City Attorney's Office
City of Fremont
3300 Capitol Avenue
P.O. Box 5006
Fremont, CA 94537-5006

Buyer:

ATTN: _____

() _____

Said addresses may be changed from time to time by notice to the other party as provided for in this section.

12. **NO BROKERS; NO COMMISSION:** Buyer represents that it has not entered into any agreement or incurred any obligation which might result in any obligation of the CITY to pay a sales commission, brokerage commission or finder's fee on this transaction to any person or entity. Buyer shall indemnify, defend and hold harmless CITY from claims, demands, or judgments arising by reason of any breach of the terms of this paragraph. The obligations of this paragraph shall survive Close of Escrow.
13. **RIGHT OF ENTRY:** During the Due Diligence Period (and if the Agreement is not terminated by the end of the Due Diligence Period, continue through the Closing Deadline), Buyer and its designated agents and independent contractors shall have the right to enter on the Property to the extent necessary for the purpose of conducting tests, engineering studies, and investigations. Prior to entering the Property, Buyer agrees to submit evidence satisfactorily to CITY of at least TWO MILLION DOLLARS (\$2,000,000) of liability insurance naming CITY as an additional insured. Buyer shall conduct such inspections, tests, studies, and investigations in such a manner as shall comply with all applicable laws and regulations, avoid damage to the Property, and minimize any interference with any occupant, tenant, or user of the Property. Buyer agrees to repair any damage it or its agents or independent contractors shall cause to the Property, keep the Property free and clear of any liens. Buyer shall indemnify, defend, and hold CITY harmless from and against any and all claims, demands, costs, expenses, damages, losses, attorney's fees and liabilities (including, but not limited to, claims of mechanics' liens) incurred or sustained by CITY as a result of or in connection with any acts of Buyer, its agents, employees, or independent contractors pursuant to the right granted by this paragraph.
14. **DOCUMENTS RELATED TO PROPERTY:** Buyer shall provide CITY with copies of any final reports, test, studies, surveys, engineering plans and specifications and architectural drawings and specifications regarding the Property prepared by or on behalf of Buyer promptly upon their finalization or, if CITY requests these in

writing, within ten (10) business days following any such request or upon a termination of this Agreement for any reason. CITY agrees that Buyer shall make no representations or warranties regarding the accuracy or completeness of any such materials, nor shall Buyer assume any liability with respect to any matter or information referred to or contained in such materials, nor shall CITY have any claim against Buyer or any consultant or contractor of Buyer arising out of such materials. All such materials shall be subject to the proprietary rights of the consultant or contractor that prepared them and any limitations on use imposed by them.

- 15. LIQUIDATED DAMAGES: BY PLACING THEIR INITIALS IMMEDIATELY BELOW, BUYER AND CITY AGREE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES IN THE EVENT BUYER FAILS TO TIMELY PURCHASE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT BECAUSE OF A DEFAULT BY BUYER, THAT THE AMOUNT OF BUYER'S DEPOSIT HEREUNDER (AS THE SAME IS INCREASED FROM TIME TO TIME UNDER THE TERMS OF THIS AGREEMENT) IS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES IN THE EVENT OF BUYER'S DEFAULT, AND THAT IN THAT EVENT BUYER FAILS TO TIMELY PURCHASE THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT BECAUSE OF A DEFAULT BY BUYER, CITY SHALL THEREUPON BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER, AND, CITY SHALL BE ENTITLED TO RETAIN BUYER'S DEPOSIT (AS SAME MAY BE INCREASED BY THE TERMS HEREOF) AS LIQUIDATED DAMAGES.**

CITY'S INITIALS _____ **BUYER'S INITIALS** _____

- 16. RISK OF LOSS:** Buyer represents to CITY that the improvements located on the Property are not a material factor in Buyer's purchase of the Property. Accordingly, in the event that, prior to Closing Deadline, the improvements located on the Property, or any part thereof, are destroyed or materially damaged, then this transaction shall go forward, without any adjustment to the Purchase Price, and neither party shall have any right to terminate this Agreement on the basis of such damage or destruction.
- 17. TIME OF THE ESSENCE:** Time is of the essence of this Agreement as to each and every provision hereof.
- 18. ENTIRE AGREEMENT:** This Agreement represents the entire and integrated agreement of the parties hereto. Both parties hereto expressly acknowledge, warrant, and understand that there are no statements, representations, inducements, or agreements made by or between the parties hereto or their respective agents and representatives, except as expressly set forth herein. No amendment, supplement or

termination hereof shall be valid except by way of a writing subscribed by the parties hereto.

19. **DUPLICATE ORIGINALS:** This Agreement may be executed in one (1) or more duplicate originals, each of which shall be deemed an original for all purposes.
20. **HEADINGS:** The section and subsection headings used in this Agreement are for convenience of reference only. They shall not be construed to limit or extend the meaning of any part of this Agreement and shall not be deemed relevant in resolving any questions or interpretation or construction of any section of this Agreement.
21. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns; provided, however, prior to the close of Escrow, Buyer shall not assign or transfer this Agreement or any interest, right, or obligation in this Agreement without the prior written consent of the CITY and any such assignment or transfer without such written consent shall be null and void. Notwithstanding the foregoing, Buyer shall have the right to assign Buyer's rights and obligations under this Agreement to any party owned or controlled by Buyer or under common control with Buyer (an "affiliate of Buyer") on written notice to CITY accompanied by a fully executed assignment and assumption agreement whereby such assignee expressly assumes the obligations of Buyer set forth herein. In no event shall Buyer be released from Buyer's obligations hereunder in connection with any assignment by Buyer to an affiliate of Buyer as provide herein.
22. **GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of California.
23. **SEVERABILITY:** In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, such provisions shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of such provision shall not be affected thereby.
24. **LEGAL EFFECT OF DOCUMENT:** No representation, warranty or recommendation is made by CITY, Buyer, their respective agents, employees or attorneys regarding the legal sufficiency, legal effect, or tax consequences of this Agreement or the transaction, and each signatory is advised to submit this Agreement to his or her attorney before signing it.
25. **ATTORNEY'S FEES:** in the event either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees.

26. **RECORDING QUITCLAIM ON TERMINATION OF AGREEMENT:** If this Agreement is terminated, Buyer agrees, if requested by CITY, to execute, acknowledge, and deliver a quitclaim deed to CITY within five (5) business days after termination and to execute, acknowledge, and deliver any other documents required by any title company to remove any cloud from the Property.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

CITY: CITY OF FREMONT

BUYER:

Jessica v Borck, Assistant City Manager

Signature: _____

Print Name: _____

Title: _____

Date

Date

APPROVED AS TO FORM:

Nellie Ancel, Sr. Deputy City Attorney

Exhibit "A"

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COUNTY ASSESSOR'S MAP

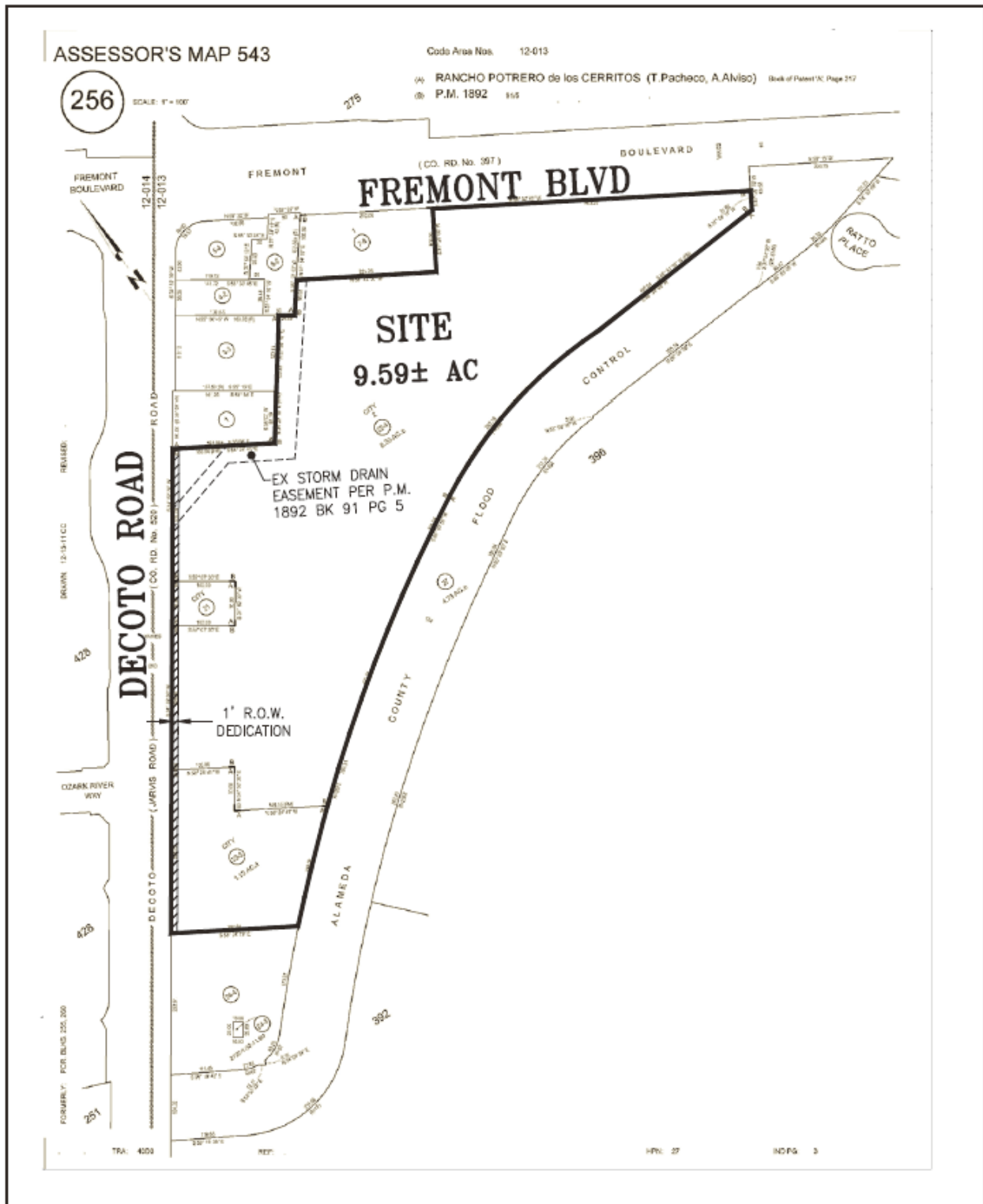


Exhibit "A"
Page 2 of 2

LEGAL DESCRIPTION

Real property in the City of Fremont, County of Alameda, State of California, described as follows:

PARCEL 1:

PORTION OF THE TRACT OF LAND DESCRIBED IN THE DEED BY THE BANK OF ALAMEDA COUNTY TO GIOVANNI AND BRUNETTA ORSETTI, BY DEED DATED NOVEMBER 21, 1934 AND RECORDED NOVEMBER 23, 1934 IN BOOK 3139 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 65 (EE/51687), DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERN LINE OF JARVIS ROAD, KNOWN AS COUNTY ROAD NO. 520, AS SAID ROAD NOW EXISTS, DISTANT THEREON SOUTH 34° 52' 30" WEST 209.09 FEET FROM THE NORTHEASTERN LINE OF SAID TRACT; RUNNING THENCE ALONG SAID LINE OF COUNTY ROAD NO. 520, SOUTH 34° 52' 30" WEST 70.00 FEET; THENCE SOUTH 55° 07' 30" EAST 100 FEET; THENCE PARALLEL TO SAID LINE OF SAID ROAD NORTH 14° 52' 30" EAST 70.00 FEET TO A LINE DRAWN SOUTH 55° 07' 30" EAST FROM THE POINT OF BEGINNING.

PARCEL 2:

PARCEL 2 OF PARCEL MAP NO. 1892 FILED JUNE 9, 1967 IN BOOK 91, Page 5 OF PARCEL MAPS, AT PAGE ALAMEDA COUNTY RECORDS.

PARCEL 3:

PORTION OF THE 8.50 ACRE TRACT OF LAND DESCRIBED IN THE DEED BY MANUEL SILVERIA DIAS AND ANNA AURORA DIAS TO GIOVANNI ORSETTI AND BRUNETTA ORSETTI, DATED MAY 21, 1946, RECORDED MAY 31, 1946, IN BOOK 4881 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 421, (TT-45640), DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERN LINE OF THE COUNTY ROAD LEADING TO HARVIS LANDING, AS SAID ROAD NOW EXISTS, WITH THE SOUTHWESTERN LINE OF SAID 8.50 ACRE TRACT; AND RUNNING THENCE ALONG SAID LINE OF SAID COUNTY ROAD NORTHEASTERLY 259.42 FEET; THENCE PARALLEL WITH THE SOUTHWESTERN LINE OF SAID 8.50 ACRE TRACT SOUTHEASTERLY 100 FEET; THENCE PARALLEL WITH SAID LINE OF SAID COUNTY ROAD SOUTHWESTERLY 70 FEET; THENCE PARALLEL WITH THE SOUTHWESTERN LINE OF SAID 8.50 ACRE TRACT; 900 FEET, MORE OR LESS, TO THE SOUTHEASTERN LINE OF SAID 8.50 ACRE TRACT; THENCE ALONG THE LAST NAMED LINE SOUTHWESTERLY 189 FEET, MORE OR LESS, TO THE SOUTHWESTERN LINE OF SAID 8.50 ACRE TRACT; AND THENCE ALONG THE LAST NAMED LINE NORTHWESTERLY 900 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

THAT PORTION THEREOF DESCRIBED IN THE DEED TO THE COUNTY OF ALAMEDA RECORDED FEBRUARY 21, 1949 IN BOOK 5732, PAGE 457, OFFICIAL RECORDS OF ALAMEDA COUNTY. ALSO EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED TO ALAMEDA COUNTY FLOOD CONTROL WATER CONSERVATION DISTRICT RECORDED MARCH 6, 1963 IN REEL 819, IMAGE 73, ALAMEDA COUNTY RECORDS. ALSO EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED TO JOHN BROOKS, ET UX, RECORDED DECEMBER 18, 1984 IN REEL 1395, IMAGE 82, OFFICIAL RECORDS OF ALAMEDA COUNTY.

APN: 543-0256-021 (Affects Parcel One), 543-0256-022-04(Parcel Two) and 543-0256-023-03(Affects Parcel Three)

Exhibit “B”

WRITTEN BID FORM

Exhibit “C”

LEASED AREA



Leased Area

Leased Area: APN 543-0256-023-03 and most of APN 543-0246-022-04

Lease Terms: expires on 6/30/2016